

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
DANVILLE DIVISION

UNITED STATES OF AMERICA)	
)	Criminal Action No. 4:20-cr-00018
v.)	
)	By: Elizabeth K. Dillon
ALAN JAX WAGONER)	United States District Judge

TRIAL ORDER

The trial of this case is scheduled for four days, beginning October 26, 2021. Jury selection will take place on this first day of trial. To administer the trial in a manner that is fair, just, and efficient, and to administer the trial during the public health crisis posed by the COVID-19 pandemic, it is ORDERED as follows:

1. The jury will consist of twelve (12) persons, plus two (2) alternates. Attorneys will be permitted to conduct voir dire after preliminary questions from the court. The court's voir dire will solicit any requests from jurors to be excused from jury duty on the grounds of hardship, including those posed by the pandemic. Attorneys' voir dire is expected to be limited to relevant questions and may not consist of disguised argument on the merits of the case.

2. Because of social distancing requirements necessary to protect the public health during the pandemic, the venire will be summonsed in two (2) randomly selected panels. The panels are scheduled for 9:00 a.m. and 1:00 p.m. After each panel is questioned, counsel will be given an opportunity to make challenges for cause and peremptory challenges pursuant to Federal Rule of Criminal Procedure 24. Under that rule, the United States will have six (6) peremptory challenges and the Defendant will have ten (10) peremptory challenges. Each side is permitted one additional preemptory challenge to be used only to remove alternate jurors. Once fourteen (14) unchallenged jurors are identified, jury selection will cease. The last two unchallenged jurors, in order of selection, will be the alternates.

3. A screening questionnaire has been mailed to all potential jurors asking them to disclose if, within the last 14 days, they have: traveled outside the Western District of Virginia; been diagnosed with COVID-19 or had contact with anyone who has been diagnosed with COVID-19; been directed to quarantine or isolate; experienced a fever or chills, persistent cough, shortness of breath or difficulty breathing, new loss of taste or smell, or other flu-like symptoms; or resided with, or been in close contact with, any person in the above-mentioned categories. They are also asked to review the CDC self-checker located at <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/coronavirus-self-checker.html>.

4. The Box.com file-sharing platform will be used in the trial of this case. Box.com provides access to evidence by the jury during deliberations, reducing the need for jurors to handle physical evidence. Jurors can view or listen to the evidence multiple times, including documents, images, and video and audio files. Box.com is NOT designed to present evidence in the courtroom; thus, the use of an evidence display device is generally required to display exhibits to witnesses. Of course, no evidence is to be displayed to the jury until it has been admitted. Box.com requires that counsel either upload electronic exhibit files to Box.com or submit electronic exhibit files in advance of trial on a USB drive, DVD, or CD for uploading to Box.com. The attached instructions provide information for the preparation by counsel of the electronic exhibit files. Exhibits shall be uploaded to Box.com or provided to the Courtroom Deputy by close of business on October 19, 2021. Further questions about Box.com should be directed to the Clerk's Office (Brittany Davis, (540) 857-5117, BrittanyD@vawd.uscourts.gov).

5. Counsel are responsible for having sufficiently available witnesses to avoid early adjournments or lengthy recesses. The government should keep defense counsel advised of the progress of its case so that the defense may be ready to proceed promptly following the conclusion of the government's case-in-chief.

6. The court, court staff, counsel, parties, representatives, jurors, and others in the courtroom will be required to wear masks at all times. Witnesses will be masked except during

their testimony. During their testimony, they will be required to wear face shields, which the court will provide. Witnesses, of course, are welcome to bring their own face shield if they prefer.

Counsel should advise their clients, representatives, and witnesses of these requirements.

6. In order to protect the parties, attorneys, court staff, and potential jurors, the court further

ORDERS as follows:

- (1) All parties, attorneys, witnesses, and court staff who are not fully vaccinated¹ will be required to show proof of a negative COVID-19 test that was administered no more than three days prior to his/her appearance in court;
- (2) All parties, attorneys, witnesses, and court staff who are not fully vaccinated² will be required to answer whether, within the last 14 days, they have: traveled internationally; been diagnosed with COVID-19 or had contact with anyone who has been diagnosed with COVID-19; been advised to quarantine or isolate; experienced a fever or chills, persistent cough, shortness of breath or difficulty breathing, new loss of taste or smell, or other flu-like symptoms; or resided with, or been in close contact with, any person in the above-mentioned categories.
- (3) Any party, attorney, witness, or court staff who has an affirmative answer to the above questions or who is not fully vaccinated and has not received a negative COVID-19 test result from a test administered no more than three days prior to his/her appearance in court will not be permitted entry into the courtroom. Properly subpoenaed witnesses who are not permitted entry into the courtroom under the terms of this Order will be expected to appear via Zoom.gov. Failure to do so may result in sanctions up to and including contempt of court; and
- (4) Any person who appears in court under the terms of this order, including anyone who is fully vaccinated, must promptly notify the court as soon as possible if, before, during, or up to 14 days after his/her appearance in court, he/she tests positive for COVID-19 or experiences COVID-19 symptoms.

For purposes of testing, polymerase chain reaction, commonly known as “PCR,” and rapid antigen test results will be accepted. To the extent that any person does not have an insurance plan that covers all costs associated with COVID-19 testing, no-cost testing may be available through that individual’s local health department and/or through the partnership between the Virginia Department of

¹ “Fully vaccinated” means at least two weeks have passed since receipt of the second dose of a two-dose vaccine (Pfizer or Moderna) or receipt of a single-dose vaccine (Johnson & Johnson).

² “Fully vaccinated” means at least two weeks have passed since receipt of the second dose of a two-dose vaccine (Pfizer or Moderna) or receipt of a single-dose vaccine (Johnson & Johnson).

Health and Walgreens pharmacy.³ But the unavailability of no-cost testing will not excuse non-compliance with the terms of this order.

All parties will be expected to secure a completed COVID-19 attestation form—a copy of which is attached to this order—from every witness *prior* to his or her appearance in court and present those to the presiding judge's chambers at least one day prior to the witness's scheduled appearance. Failure to provide completed COVID-19 attestation forms as directed herein will preclude the witness from appearing in-person.

7. If anyone's answer is yes to these questions, then counsel is required to report the same to the court as soon as possible. Further, any change of health condition regarding diagnosis of, symptoms of, or exposure to COVID-19 during the trial is to be reported to the court as soon as possible.

It is **so ORDERED**.

Entered: September 24, 2021.

/s/ Elizabeth K. Dillon

Elizabeth K. Dillon
United States District Judge

³ See Walgreens Partnership, *available at* <https://www.vdh.virginia.gov/coronavirus/covid-19-testing/walgreens-partnership/> (last visited September 15, 2021).